



**HAWAII SMALL BUSINESS
REGULATORY REVIEW
BOARD
ANNUAL REPORT SUMMARY**

Results for Calendar Year 2016

**Recommendations and Review of Administrative
Rules, Legislation**

and

**Requests from Small Business Owners for Review
of Any Rule Adopted by a State Agency**

In Compliance with

Chapter 201M, Hawaii Revised Statutes

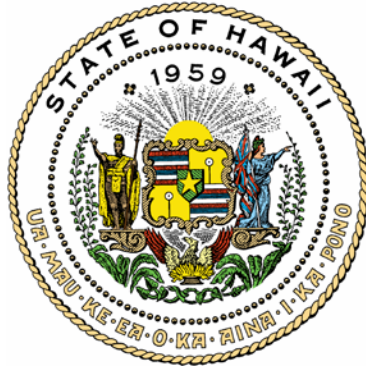
HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD

ANNUAL REPORT SUMMARY 2016

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SECTION I



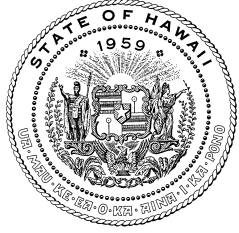
MESSAGE FROM THE DIRECTOR



On behalf of the Department of Business, Economic Development & Tourism, I continue to support the Small Business Regulatory Review Board as I believe in what this Board stands for.

Thank you, members, for your hard work and dedication to Hawaii's small business community.

Luis P. Salaveria
Director



SMALL BUSINESS REGULATORY REVIEW

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Governor

Luis P. Salaveria
Director, DBEDT

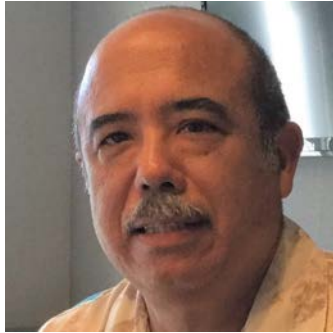
2016 MESSAGE FROM THE CHAIR

Members

Anthony Borge
Chair
Oahu

Harris Nakamoto
Vice Chair
Oahu

Kyoko Y. Kimura
2nd Vice Chair
Maui County



Anthony Borge, Chair, SBRRB

Robert Cundiff
Oahu

Nancy Atmospera-Walch
Oahu

Garth Yamanaka
Hawaii County

Director, DBEDT
Voting Ex Officio

Another productive year has come to a close. We have been blessed to have an outstanding team of volunteer Board members who persevere toward our mission of enabling a regulatory environment that encourages and supports the vitality of small business in Hawaii. Our Board of advocates continued to meet every month to address, collaborate, and provide timely responses to the Governor, State and County agencies, and small businesses by reviewing numerous proposed and amended regulations that had the potential to negatively impact small business.

On behalf of all the Small Business Regulatory Review Board members, I once again, would like to extend a big Mahalo to Governor David Ige, the State Legislature, and the Agency Directors and staff for their support and cooperation in pursuit of our mission.

I also want to thank each Board member who donated unselfish hours, as well as time away from their families and businesses, to share their invaluable business knowledge to improve and enhance the growth and success of small businesses throughout the State of Hawaii, as small business is the economic engine for Hawaii. Mahalo to DBEDT Director Luis Salaveria for his steadfast support, and SBRRB's Administrator, Dori Palcovich, for her continued hard work and dedication to the Small Business Review Board.

OVERVIEW

The Small Business Regulatory Review Board is pleased to provide the Annual Report Summary for the period covering January 2016 through December 2016. Pursuant to the Hawaii Small Business Regulatory Flexibility Act, Chapter 201M, Hawaii Revised Statutes, the annual summary is based on the following.

[201M-5] Small business regulatory review board; powers

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to any agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies or the legislature regarding its review of any proposed new or amended rules.

ANNUAL SUMMARY

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

The Small Business Regulatory Review Board was established on July 1, 1998, with the passage of the Small Business Regulatory Flexibility Act, pursuant to Act 168. Subsequently, the role of the Board has been codified in Chapter 201M, Hawaii Revised Statutes (HRS), as amended. (See Appendix 1.)

Statutorily, the Board is comprised of nine members, eight current or former owners or officers of businesses from across the State, and the Director of Business, Economic Development, and Tourism (DBEDT) or the Director's designated representative who serves as an "ex officio" voting member. The Board is administratively attached to DBEDT and has responsibility for providing recommendations to State agencies on new and amended administrative rules that directly impact small business. The Board is also charged with reviewing existing rules upon the request from small business owners or at the Board's initiative. For requests regarding County ordinances, the Board may make recommendations to County Council or the Mayors for appropriate action.

In addition to reviewing rules and regulations, members volunteer their time attending State agency meetings, making presentations by performing outreach activities to small business organizations such as the local Chambers of Commerce, and testifying on legislation. The Board also has the power to solicit testimony from the public regarding any reports submitted by State departments.

As an effective and efficient means of review, each member is assigned to one or more State department as a "discussion leader" and is responsible for the initial review of the

administrative rules of that department prior to consideration by the full Board. As of December 2016, the Board was operating with 7 members.

ADMINISTRATIVE RULE REVIEW

During 2016, the Board reviewed and made recommendations on 37 new and amended rules, both pre- and post-public hearing; see summary below. Since its inception, the Board reviewed a total of 712 sets of proposed new and amended administrative rules. (See Appendix 2.)

The following recommendations were made by the Board to State and County Agencies during 2016.

Department / County	Chapter / Section Number	Chapter / Section Name	Proceed to Public Hearing (Pre-Public Hearing)	Proceed to Adoption (Post Public Hearing)	Other Recommendation(s)
<i>Department of Accounting & General Services – Title 3</i>	181	International Energy Conservation Code, 2015 Edition	X		It was recommended that members of the State Building Code Council be encouraged to register and vote in the allotted twelve (12) voting member slots for Hawaii provided by the International Codes Council. This will allow for Hawaii to have input into the Building Code process to customize and adapt the proposed requirements to meet the needs of Hawaii’s unique climate conditions and geographical location.
	182, 182.1	State Electrical Code	X		
<i>Department of Agriculture – Title 4</i>	138	Hawaii-Grown Cacao and Hawaiian Chocolate	X	X	It was recommended that the proposed amendments move forward to public hearing but with reservations on the sections of the rules regarding the banning of wild, undomesticated animals into the State because of the Board’s concerns over the rules’ impact on Hawaii’s small business. It was also recommended that the rule amendments proceed to public hearing because the impact on small business needs to be assessed
	71	Non-Domestic Animal Import Rules	X		

	72, Sec. 12	Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules / Quarantine Restrictions on Ohia and Soil from Rapid Ohia Death Invested Areas	X		further through the public hearings, and that the motion's reservations do not apply to the portions of the rule amendments regarding tilapia and crickets, as there was no indication that these portions of the rules affected small business.
	143	Standards of Coffee	X		
Department of Business, Economic Development & Tourism – Title 15					
	210	Rules, Regulations, Charges and Fees for Public Parks	X		
	218	Kakaako Reserved Housing Rules	X		
Department of Commerce & Consumer Affairs – Title 16					
	14	Insurance Holding Company System	X		
	53	Fees	NA		No action was taken due to the lack of a voting quorum. After public hearing, the rules were not brought forth in front of the Board due to the lack of voting quorum.
	77	Contractors	X		
Department of Health – Title 12					
	62	Wastewater Systems		NA	No action was taken due to the lack of a voting quorum (four in support; one in opposition). The Board was appreciative of DOH spending the time on the process and following the SBRRB's requests prior to the public hearings.
	55	Water Pollution Control	X		
	50	Food Safety Code	X		
Department of Labor & Industrial Relations – Title 12					
	229	General, Administrative, and Legal Provisions	X	X	The Board appreciated DLIR involving the stakeholders in the promulgating of the amendments prior to the public hearing, and understood that the increase in the fees is warranted in order to provide the level of service required.
	230.1	Elevators, Escalators, Dumbwaiters, Moving Walks, and Material Lifts and Dumbwaiters with Automatic Transfer Devices	X	X	

	15	Hawaii Workers' Compensation Medical Fee Schedule	X	X - ?	
Department of Land & Natural Resources – Title 13	86.1	Sea Cucumber Management		X	The Board supported the adoption of the rules.
	74	License and Permit Provisions and Fees for Fishing, Fish, and Fish Products	X		
Department of Taxation – Title 18	231	Income Tax Law		X	
	251	Rental Motor Vehicle, Tour Vehicle, and Car-Sharing Vehicle Surcharge Tax		X	
Department of Transportation – Title 19	44	Rules Relating to Services and Procedures, Charges, Tools and Fees	X		
	135	Periodic Safety Inspection of Mopeds	X		
City and County of Honolulu	Chapter 6	Public Transit Supportive Services – Car Sharing Program	X	X	The Board commended the Honolulu Liquor Commission for holding pre-hearing focus group meetings, and subsequently for amending the rules based on recommendations made at the public hearing.
	Title 3, Subtitle 6, Chapter 80 Chapter 82	General Provisions Licenses and Permits, General Provisions Procedure for Obtaining License	X	X	
	Chapter 83	Duties of and Supervision over Licensee			
	Chapter 84	General Violations and Prosecutions			
	Chapter 86	Rules and Regulations Relating to Parades and Activities for the Department of Transportation Services		X	
County of Kauai	Chapter 23, Department of Parks and Recreation	Governing of Commercial Surfing and Stand-up Paddle Instruction, Part V, Section 40, time of Use (a), (b), Section 43 (f), and Sections 43 (u) & (v)		X	The Board recommended that a performance audit be conducted of the entire Department of Water to include justification for future rate increases in regards to providing additional infrastructure, improvements to be taken, and how the improvements are expected to impact the general stakeholders,
	Section VII.	Facilities Reserve Charge, Part 4 Fixing Rates for the Furnishing of Water Service in the County of Kauai		X	

	Chapter V.	Rules of Practice and Procedure of the County of Kauai Public Access, Open Space, and Natural Resources Preservation Fund Commission – Report Process, Relating to the Process of Receiving Proposals, and Analyzing and Recommending Land or Property Entitlements for County Council Approval	X	X	including the small business community.
	Rules & Regulations	Rules & Regulations of the Liquor Control Commission of the County of Kauai	X	X	

LEGISLATIVE ACTIVITY

Since its inception, the Board has supported legislation by submitting testimony on bills of interest to small business. See “Legislative Review” at the end of this report for specific legislation the Board followed during the 2016 session.

SMALL BUSINESS IMPACT STATEMENT *and* GOVERNOR’S

ADMINISTRATIVE DIRECTIVE NO. 09-01

Under Section 201M-2, HRS, State agencies that want to adopt new or modified administrative rules that have an impact on small business must submit to the Board a small business impact statement showing the economic impact on those businesses. As a result, the Board reviews the small business impact statements and the Governor’s Administrative Directive (AD), while working with the rule-drafting agencies on behalf of the small business community.

On October 29, 2009, AD 09-01 (See Appendix 3.) was issued to update the policy and procedures by which State departments and agencies request Governor’s approval for a public

hearing of any proposed adoption, amendment, or repeal of administrative rules developed under Chapter 91, HRS.

BOARD MEMBERS / CHAIRPERSON

Pursuant to Section 201M-5 (c), “a majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.” At the 2016 May board meeting, Mr. Anthony Borge was re-elected Chair, Mr. Harris Nakamoto was re-elected Vice Chair, and Ms. Barbara Bennett was re-elected Second Vice Chair. Subsequently to Ms. Bennett’s resignation from the Board, Ms. Kyoko Kimura was elected Second Vice Chair.

The board member nomination process, under Section 201M-5, HRS, provides that “the Board shall consist of nine members, who shall be appointed by the governor pursuant to section 26-34; provided that: (1) Three members shall be appointed from a list of nominees submitted by the president of the senate; (2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives; (3) Two members shall be appointed by the governor; (4) The director of business, economic development, and tourism, or the director’s designated representative, shall serve as an ex officio voting member of the board; (5) The appointments shall reflect representation of a variety of businesses in the State; (6) No more than two members shall be representatives from the same type of business; and (7) There shall be at least one representative from each county.”

In addition, “nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations. Except for the ex officio member, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government.”

At the end of December 2016, the Board was comprised of the following seven members:

- Anthony Borge, RMA Sales, representing the City and County of Honolulu
- Harris Nakamoto, Kaiser Permanente, representing the City and County of Honolulu
- Kyoko Y. Kimura, Aqua-Aston Hospitality, representing Maui County
- Robert Cundiff, Rengo Packaging, Inc., representing the City and County of Honolulu
- Nancy Atmospera-Walch, Advantage Health Care Provider, Inc., and AIM Healthcare Institute, representing the City and County of Honolulu
- Garth Yamanaka, Yamanaka Enterprises, Inc., representing Hawaii County
- DBEDT Director, Voting Ex Officio Member

ACTIVITIES AND PROJECTS

The following activities and projects were performed in 2016.

▪ **Hawaii Business with Reg Baker** – In May, Chair Borge, Vice Chair Nakamoto, and Second Vice Chair Ms. Kimura, participated in the live-stream Thinktankhawaii.com show, “Hawaii Business with Reg Baker.” Mr. Baker is a member of the Small Business Administration’s National Board for Fairness, which reviews federal regulations impacting small business. During the forty-five minute show, the members discussed the Board’s creation, its mission, how members are selected, and their roles on the Board, and commentary on various issues on rules and regulations. The link to the show is: <https://youtu.be/M1syISjTW0Y?t=23>. To date, the show has had the most viewers of any other “Hawaii Business with Reg Baker” show.

▪ **Regulatory Enforcement Fairness Roundtable** – In August, DBEDT staff member participated on behalf of the Board, in the Regulatory Fairness Roundtable. Among the hosts were Ms. Yolanda Swift, Deputy National Ombudsman and Mr. Reg Baker from the Federal Regulatory Fairness Board. Many topics were discussed that included creating a level regulatory playing field for small businesses as well as information about federal and state agency resources for small business.

▪ **Regulation Review Card** – In July, the Board launched the “Regulation Review Card.” This is a template form connected to the Board’s website for small business owners to alert the Board of rules and regulations that impact their small businesses. Go to:
<http://dbedt.hawaii.gov/sbrb/regulation-review-card>.

▪ **e-Newsletter** – The Board’s first e-Newsletter was sent out in January to a list of small business organizations, chambers of commerce and State Legislators. The e-Newsletters are comprised of commentary about the Board’s activities, such as a Message from the Chair, board member announcements, a link to the Board’s monthly Agenda, a list of Hawaii Administrative Rules to be reviewed by the Board, upcoming Board meetings, and other pertinent information. Subsequent e-Newsletters were distributed during the months of March, May, July, August, September, October, November and December.

▪ **Facebook and Twitter** – To enhance its small business outreach efforts, the SBRRB is now on Facebook and Twitter.

▪ **Department of Health’s Compliance Assistance Office** – At the May meeting, Ms. Genevieve Salmonson, Environmental Ombudsman, from the Department of Health’s Compliance Assistance Office discussed the purview of its office, which was established in the 1990’s under the Clean Air Act. The Compliance Assistance Office follows the federal standard

definition of small business, which varies from industry. The Office receives (confidential) complaints in regards to both state and federal rules.

▪ **Press Releases and Articles** – During 2016, the following articles/press announcements were released:

- On May 12, 2016, *Star Advertiser* announced that HCDA (Hawaii Community Development Authority) Board will be providing to the Small Business Regulatory Review Board new draft administrative rules for the transit-oriented development rules in the 450-acre area bounded by Ala Moana Boulevard and King, Piikoi and Punchbowl Streets where rail stations are planned.
- On May 25, 2016, DBEDT released a press announcement naming the newly elected Board officers, Anthony Borge as Chair, Harris Nakamoto as Vice Chair and Barbara Bennett as Second Vice Chair.
- On May 31, 2016, *Pacific Business News* (bizjournals.com) announced the election of Anthony Borge's chairmanship to the Board, under "People on the Move."
- On May 31, 2015, *Pacific Business News* (bizjournals.com) announced the election of Mr. Nakamoto's vice chairmanship to the Board, under "People on the Move."
- On May 31, 2016, *Pacific Business News* (bizjournals.com) announced the election of Barbara Bennett's second vice chairmanship to the Board, under "People on the Move."
- On May 31, 2016, *Pacific Business News* (bizjournals.com) announced the nomination of Kyoko Kimura to the Board, under "People on the Move."

- On June 2, 2016, *Pacific Business News* (bizjournals.com) announced the nomination of Nancy Atmospera-Walch to the Board, under “People on the Move.”
- On September 21, 2016, KHON Channel 2 News highlighted the Board meeting when the members heard from and reviewed the State Department of Health’s proposed amendments to HAR Chapter 11-50, “Food Safety Code.” DOH is proposing stricter regulations for all eateries statewide to help prevent foodborne illnesses. See: <http://khon2.com/2016/09/21/state-developing-stricter-food-safety-rules-to-prevent-foodborne-illnesses/>
- On October 12, 2016, DBEDT released a press announcement regarding the creation of the Board’s “Regulatory Review Card.”
 - o On October 16, 2016, *Hawaii Free Press* printed the announcement in its on-line web-paper.
- On November 17, 2016, *Pacific Business News* (bizjournals.com) announced the election of Kyoko Kimura’s second vice chairmanship to the Board, under “People on the Move.”
- In the November 18, 2016 *Pacific Business News*, the Chamber of Commerce of Hawaii announced this Board’s new Regulatory Review Card along with a narrative as to the Board’s purview and mission.
- On December 9, 2016, the *Honolulu Star Advertiser* announced in the article, “State is Urged to Tweak Building Codes” that the Small Business Regulatory Review Board will be reviewing the changes rules of the International Energy Conservation Code, after the public hearing.

▪ **I-Pads** – The Board was provided funds from DBEDT which were used to purchase a laptop computer for the Board’s staff and i-pads for the members. The I-pads are expected to save on time and cost as the members are now able to download the monthly agenda packets directly from the I-pads rather than DBEDT mailing out costly, voluminous packets each month.

▪ **Post-Public Hearing “Small Business Statement”** – In August, the Board updated its Small Business Statement after Public Hearing under Section 201M-3, HRS to include an explanation as to how agencies involved small businesses in the development of the proposed and amended rules and whether there were any recommendations incorporated into the rules.

▪ **Good-bye and Good Luck to Board Members** – Two members during 2016, Phillip Kasper and Barbara Bennett, bid the Board a “fond farewell” due to the pressing demands and responsibilities as small business owners. The members thank them for all their hard work and dedication and wish them the best!

▪ **Website** – The Board’s webpages were regularly updated throughout the year. See: <http://dbedt.hawaii.gov/sbrrb>.

▪ **Brochures and Evaluation Survey** – The Board’s brochures are updated regularly.

▪ **SBRRB Email** – The Board was issued a new email address at the end of 2016 – DBEDT.sbrrb.info@hawaii.gov.

REQUESTS FROM SMALL BUSINESS FOR REVIEW OF ANY
RULE ADOPTED BY A STATE AGENCY

1. In December 2015, Ms. Dale Evans, owner of Charley’s Taxi, approached the Board for assistance in determining if the airport pick-up fees at Hawaii International Airport (HIA) are consistent with HAR Title 19, Chapter 38.1, “On-Demand Taxi Service at Public Airports,” HAR Chapter 20.1, “Commercial Services at Public Airports” and with Act 163, Session Laws of Hawaii, 1994.

Ms. Evans also requested that improvements be made to the dispatching of taxi service for passengers through operational and enforcement of rules and procedures. The Board unanimously agreed to meet with the Department of Transportation (DOT) to discuss these concerns. In January, a meeting was held with several DOT representatives including Mr. Ross Higashi, Deputy Director. A follow-up request was made to DOT for the following:

1) Current annual cost of dispatching service for the taxi operators versus the revenue derived from the \$5.00 pick-up fee;

2) Future review and possible update of Chapter 19-38.1, “On-Demand Taxi Service at Public Airports” and Chapter 19-20.1, “Commercial Services at Public Airports” to incorporate advancement in technologies, changes in the market, and passengers’ needs; and

3) Copy of the master plan that was developed by DOT pursuant to Act 163, Hawaii Sessions Law, 1994.

On February 3, a response letter was received from Mr. Ross Higashi, which included “Procedures for Taxi Drivers Operating at the Honolulu International Airport, Effective

July 1, 2015. On February 16, DOT responded to the Board's requests noted above and summarized below:

- 1) Airport concession agreements do not authorize the Airports Division to disclose net proceeds or how net proceeds are spent. Audits are performed on gross receipts of the concessionaries to determine that Airports Division is being paid either 85% of the annual fee or 20% of the annual gross receipts, whichever is greater. Audits include records inspected, records showing daily sales, gross income tax reports, and all other financial information such as sales, gross receipts, cost and expenses, capital expenditures, and depreciation and amortization;
- 2) DOT intends to amend Chapter 19, based on enactment of statute or when there are significant changes in industry standards, although it is believed that the current definitions adequately cover the advancement in technology allowing travelers to directly reach service providers;
- 3) It was indicated that a master plan was never produced specifically for ground transportation at HIA; instead the following was provided: 1) *A Review of Open Taxi Operations and Ground Transportation, Hawaii State Airports*, Project Number ES1042-94, dated September 27, 1994, and 2) *Commercial Ground Transportation at Honolulu International Airport, Hawaii State Airports*, Project Number ES1042-94, dated September 27, 1994; both of which, according to DOT, "met the requirements of Act 163."

Result: Ms. Evans requested that this Board defer any action until the City Council of Honolulu decides to approve or not the "certification" of private transportation providers.

SECTION II

LEGISLATIVE REVIEW

Amendments to Chapter 201M, HRS – The Board is proposing the following amendments to its statute during the 2017 Hawaii Legislative Session:

- Adopt a more explicit definition of small business;
- Clarify the powers of the small business regulatory review board when reviewing administrative rules that impact small business;
- Potentially increase the total number of members from nine to eleven;
- Clarify when reporting by the agencies is required for submission to the small business regulatory review board and when reporting by the board is required for submission to the legislature.

The Board provided testimony on the following measures during the 2016 Legislative Session.

1. **Bill No. 140 - An Ordinance amending Chapter 20 of the Hawaii County Code 1983, 2005 Edition, as Amended, by Adding a New Article Relating to Reduction of Polystyrene Foam “Styrofoam” Food Containers and Food Service Ware**, promulgated by the Department of Environmental Management, County of Hawaii.

Background: This measure was heard in April where it was explained that this measure was heard by Hawaii County Council and submitted to the Environmental Management Department for a second draft. Testifiers at the Board meeting opposed this proposed Ordinance.

Recommendation and Result: The Board, in response to the County of Hawaii’s Department of Environmental Management’s request, unanimously

agreed to vote in opposition of the proposed Ordinance, and recommended that a macro-approach be taken that would:

- Incorporate education in caring for the State's environment and taking personal responsibility;
- Provide for a comprehensive resource reclamation process to address all recyclable/reusable materials that end up in landfills; and
- Create a total simplistic approach to provide a long-term solution to preserve and sustain our precious environment, resources, and economy for future generations.

2. **House Bill 774, HD1, SD1, Relating to Small Business** – This measure makes an appropriation to the Department of Business, Economic Development and Tourism for the Small Business Regulatory Review Board to hire additional staff.

Background: The Board unanimously supported the bill at the January meeting.

Recommendation and Result: The measure was not introduced in 2016.

3. **Governor's Message No. 525** - Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Harris Nakamoto, for a term to expire June 30, 2019.

Background: The Board unanimously agreed to support this measure.

Recommendation and Result: On March 11, 2016, the recommendation by the Senate Committee on Economic Development, Environment and Technology to Advise and Consent to Mr. Harris' nomination was confirmed.

4. **Governor's Message No. 663** - Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Kyoko Kimura, for a term to expire June 30, 2020.

Background: The Board members unanimously supported this measure.

Recommendation and Result: On April 8, 2016, the recommendation by the Senate Committee on Economic Development, Environment, and Technology to Advise and Consent to the nomination was confirmed.

5. **Governor's Message No. 738** - Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Nancy Atmospera-Walch, for a term to expire June 30, 2020.

Background: The Board unanimously supported this measure.

Recommendation and Result: On April 8, 2016, the recommendation by the Senate Committee on Economic Development, Environment, and Technology to Advise and Consent to the nomination was confirmed.

Appendix

1. Chapter 201M, Hawaii Revised Statutes
2. Administrative Rules Reviewed Matrix
3. Administrative Directive No. 09-01

1. Chapter 201M, Hawaii Revised Statutes

CHAPTER 201M

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

Section

- 201M-1 Definitions
- 201M-2 Determination of small business impact;
small business impact statement
- 201M-3 Small business statement after public hearing
- 201M-4 Advisory committee on small business;
consultation process for proposed rules
- 201M-5 Small business regulatory review board; powers
- 201M-6 Petition for regulatory review
- 201M-7 Periodic review; evaluation report
- 201M-8 Waiver or reduction of penalties
- 201M-9 Executive order

§201M-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Advisory committee" means an advisory committee on small business as established in section 201M-4.

"Affected small businesses" or "affects small business" means any potential or actual requirement imposed upon a small business through an agency's proposed or adopted rule that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

"Agency" means each state or county board, commission, department, or officer authorized by law to make rules, except those in the legislative or judicial branches.

"Board" means the small business regulatory review board.

"Rule" shall have the same meaning as in section 91-1.

"Small business" means a for-profit enterprise consisting of fewer than one hundred full-time or part-time employees. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§2, 5; am L 2007, c 217, §2]

§201M-2 Determination of small business impact; small business impact statement. (a) Prior to submitting proposed rules for adoption, amendment, or repeal under section 91-3, the agency shall determine whether the proposed rules affect small business, and if so, the availability and practicability of less restrictive alternatives that could be implemented. This section shall not apply to emergency rulemaking.

(b) If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses

and prepare a small business impact statement to be submitted with the proposed rules to the departmental advisory committee on small business and the board when the rules are essentially complete and before the rules are submitted to the governor for approval for public hearing. The statement shall provide a reasonable determination of the following:

- (1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
- (2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;
- (3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;
- (4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;
- (5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;
- (6) How the agency involved small business in the development of the proposed rules; and
- (7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

(c) When a proposed rule includes provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, the agency shall, in addition to the information required by subsection (b), include in the small business impact statement information comparing the costs and benefits of the standard set by the proposed rule to the costs and benefits of the standard under the comparable or related federal, state or county law. The agency shall also include an explanation of its decision to impose the higher

standard. The agency's comparison and justification shall include:

- (1) A description of the public purposes to be served by imposing the standard under the proposed rule;
- (2) The text of the related federal, state, or county law, including information about the purposes and applicability of the law;
- (3) A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes and of the standards and their application and administration;
- (4) A comparison of the monetary costs and benefits to the implementing agency and other agencies directly affected, of imposing the proposed standard, with the costs and benefits of imposing or deferring to the related federal, state or county standard, as well as a description of the manner in which any additional fees derived from imposition of the proposed standard are to be used; and
- (5) A comparison of the adverse effects on small businesses of the standard imposed by the proposed rule, with the adverse effects on small business of the related federal, state, or county standard.

(d) This chapter shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as federally-mandated regulations that afford the agency no discretion to consider less restrictive alternatives. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §3; am L 2008, c230, §3]

[§201M-3] Small business statement after public hearing. (a) For any proposed rule that affects small business, the agency shall also submit a small business statement to the small business regulatory review board and the departmental advisory committee on small business after the public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide the following information:

- (1) A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, and a summary of the agency's response to those comments;
- (2) The number of persons who:
 - (A) Attended the public hearing;
 - (B) Testified at the hearing; and
 - (C) Submitted written comments; and

- (3) If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule, the reason why a requested change was not made, and the problems or negative result the change would provide if adopted.

(b) If the small business regulatory review board finds that a statement provided pursuant to subsection (a) (3):

- (1) Indicates inconsistency with any of the agency's determinations under section 201M-2(b); or
- (2) Does not address the concerns of public input, the board with good cause may request a written response from the agency explaining the rationale used to deny the public concerns within ten working days of receipt of the small business statement after public hearing. The agency shall respond in writing to the board's concerns within ten working days.

(c) The written response from an agency required in subsection (b), at a minimum, shall:

- (1) Specifically address each issue and concern raised in the board's request for a written response; and
- (2) Affirmatively state that the agency has considered all written and oral testimony received at the agency's public hearing and has addressed all issues or concerns raised in the written or oral testimony. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2012, c 241, §2]

[§201M-4] Advisory committee on small business; consultation process for proposed rules. (a) There may be established within and administratively attached to every department of the State or county whose rules affect small business activities, an advisory committee on small business. The advisory committee shall consist of three or more odd number of members appointed by the department and may advise more than one department. The department shall have the authority to appoint members to the advisory committee and to fill any vacancies. The members shall serve on a volunteer basis and have experience or knowledge of the effect of regulation by those departments on the formation, operation, or expansion of a small business. No person shall serve on the small business regulatory review board and an advisory committee on small business concurrently. The advisory committees shall not be subject to the requirements of chapter 91.

(b) When the agency is proposing rules that affect small business, the agency may consult with the administratively attached departmental advisory committee on small business regarding any matter related to the proposed rules prior to

complying with the rulemaking requirements provided in chapter 91. Each agency shall develop its own internal management procedures for soliciting comments during the drafting of proposed rules from affected small businesses. The agency may develop creative procedures for the solicitation of comments from affected small businesses during the drafting or development of proposed rules.

(c) If necessary, any group or members of affected small businesses may also be consulted by the agency to formulate the relevant language, develop criteria, and provide any other expertise to ensure that the proposed rules will be drafted in a manner that will protect the public health, welfare, and safety without placing an undue and significant burden upon small business. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

§201M-5 Small business regulatory review board; powers. (a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule or to consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of nine members, who shall be appointed by the governor pursuant to section 26-34; provided that:

- (1) Three members shall be appointed from a list of nominees submitted by the president of the senate;
- (2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;
- (3) Two members shall be appointed by the governor;
- (4) The director of business, economic development, and tourism, or the director's designated representative, shall serve as an ex officio voting members of the board;
- (5) The appointments shall reflect representation of a variety of businesses in the State;
- (6) No more than two members shall be representative from the same type of business; and
- (7) There shall be at least one representative from each county. For purposes of paragraphs (1) and (2), nominations shall be solicited from small business

organizations, state and county chambers of commerce, and other interested business organizations.

(c) **Except for the ex officio member**, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4; am L 2012, c 241, §3]

§201M-6 Petition for regulatory review. (a) In addition to the basis for filing a petition provided in section 91-6, any affected small business may file a written petition with the agency that has adopted the rules objecting to all or part of any rule affecting small business on any of the following grounds:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement submitted prior to the adoption of the rules;
- (2) The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;

- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(b) Upon submission of the petition, the agency shall forward a copy of the petition to the board, as notification of a petition filed under this chapter. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition from the appropriate departmental advisory committee on small business. Within sixty days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the small business review board within sixty days after receipt of the petition. If the agency determines that the petition merits the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with section 91-3.

(c) If the agency determines that the petition does not merit the adoption, amendment, or repeal of any rule, any affected small business may seek a review of the decision by the board. The board shall promptly convene a meeting pursuant to chapter 92 for the purpose of soliciting testimony that will assist in its determination whether to recommend that the agency initiate proceedings in accordance with section 91-3. The board may base its recommendation on any of the following reasons:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the impact statement submitted prior to the adoption of the rules;
- (2) The impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in the State in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or

(6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(d) If the board recommends that an agency initiate rulemaking proceedings for any reason provided in subsection (c), it shall submit to the legislature an evaluation report and the agency's response as provided in subsection (b). The legislature may subsequently take any action in response to the evaluation report and the agency's response as it finds appropriate.

(e) If the board does not recommend that an agency initiate rulemaking proceedings, the board shall notify the small business of its decision and inform the small business that the small business may submit a complaint to the ombudsman pursuant to chapter 96 regarding the decision of the agency or board.

(f) Nothing in this section shall entitle an affected small business to a contested case hearing under chapter 91. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §5]

§201M-7 Periodic review; evaluation report. (a) Each agency having rules that affect small business shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board; provided that, by June 30 of each year, each agency shall submit to the small business regulatory review board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

(b) The small business regulatory review board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

(c) The board may solicit testimony from the public regarding any report submitted by the agency under this section

at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the next regular session of the legislature. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §6; am L 2012, c 241, §4]

§201M-8 Waiver or reduction of penalties. (a) Except where a penalty or fine is assessed pursuant to a program approved, authorized, or delegated under a federal law, any agency authorized to assess civil penalties or fines upon a small business shall waive or reduce any penalty or fine as allowed by federal or state law for a violation of any statute, ordinance, or rules by a small business under the following conditions:

- (1) The small business corrects the violation within a minimum of thirty days after receipt of a notice of violation or citation; and
 - (2) The violation was unintentional or the result of excusable neglect; or
 - (3) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.
- (b) Subsection (a) shall not apply:
- (1) When a small business fails to exercise good faith in complying with the statute or rules;
 - (2) When a violation involves willful or criminal conduct;
 - (3) When a violation results in serious health and safety impacts;
 - (4) To violations of chapters 6E, 180, 180C, 181, 182, 183, 183C, 183D, 186, 187A, 188, 188F, 189, 190, 190D, 195, 195D, 195F, 205, 205A, 340A, 340E, 341, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P;
 - (5) To violations of sections 200-9(b) and (c), 200-24(4), 200-37, and 200-38; or
 - (6) To violations of administrative rules promulgated pursuant to section 200-4(6); except for rules pertaining to matters listed in section 200-4(6)(A), (B), (C), and (D).

(c) An agency may adopt rules to implement the requirements of this section. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2004, c 206, §1]

[\$201M-9] Executive order. The governor may execute any executive order, memorandum, or directive necessary to implement any provision of this chapter. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

2. Administrative Rule Review Matrix

Administrative Rule Review Matrix

	Month/Year	Support	Oppose	No Comment/ No Action	Support W/ Rec. & Comments	Support w/ Reservations	Support/ Oppose	Pending/ Deferred
FY 2000 to FY 2015		519	13	66	30	17	8	0
FY 2016	Jul-15	2						
	Aug-15	1			1			
	Sep-15	7			1			
	Oct-15	3			1			
	Nov-15	4						
	Dec-15	2						
	Jan-16	5		1	1			
	Feb-16	4			1			
	Mar-16	2						
	Apr-16	0						
	May-16	0						
	Jun-16	NA						
FY 2017	Jul-16	6						
	Aug-16	4						
	Sep-16	7					1	
	Oct-16	1						
	Nov-16	3						
	Dec-16	1						
	Total	571	13	67	35	17	9	0

3. Administrative Directive 09-01



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

October 29, 2009

ADMINISTRATIVE DIRECTIVE NO. 09-01

To: All Agency Heads

Subject: Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules

This administrative directive updates the policy and procedure by which departments or agencies shall request executive approval of any proposed adoption, amendment, or repeal of administrative rules. It rescinds Administrative Directive No. 99-02, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated August 2, 1999.

Legal Reference:

Section 91-3(c), Hawaii Revised Statutes, provides that, "the adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor."

Hawaii Revised Statutes Chapter 201M, the "Hawaii Small Business Regulatory Flexibility Act," requires that if a proposed rule "affects small business," the department or agency shall submit a "small business impact statement" and a "small business statement" to the Small Business Regulatory Review Board. Chapter 201M does not apply to emergency rulemaking or rules adopted to comply with a federal requirement.

Policy:

Whenever any department or agency requests executive approval for the proposed adoption, amendment, or repeal of a rule, the director of the department or agency shall ensure that the proposed changes conform to existing legal provisions, including Chapter 91, Hawaii Revised Statutes. In requesting the adoption, amendment, or repeal of any rule, the director will explain or submit the following:

1. Explain the exact changes to be made and the purpose, reasons for the changes, and justification for the change. If applicable, cite the present rule and quote the proposed rule change in full without paraphrasing.

2. Describe the manner in which the proposal would affect the agency's internal and external responsibilities, programs, functions, operations, activities, and inter-relationships.
3. Identify the final result expected by instituting the proposal (e.g. a program improvement/clarification of statute).
4. Identify any program and financial impacts on the State that will arise upon the implementation of the proposal to include:
 - a. Long- and short-range program impacts, and
 - b. Anticipated program funding required for the present biennium, including a statement as to whether funds are currently budgeted to permit the implementation and enforcement of the proposed adoption, amendment, or repeal of the rule, and estimates for anticipated savings or funding shortfalls projected over the subsequent four-year planning period, and the assumptions used to arrive at the estimates.
5. Describe long- and short-term impacts to the public or the economy of the State.
6. Identify the alternatives explored in lieu of implementing the proposal.
7. Provide an explanation of whether the proposal will affect small business. For purposes of this Directive, a proposal will affect small business if the proposal will impact a for-profit enterprise consisting of fewer than 100 full-time or part-time employees and will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

If a proposal affects small business, the department or agency will describe:

- a. Whether it has considered the availability and practicability of less restrictive alternatives that could be implemented in lieu of adopting the proposal;
- b. Whether it has considered creative, innovative, or flexible methods of compliance for small business in lieu of adopting the proposed rule; and
- c. Whether it has prepared a "Small Business Impact Statement" that has been submitted to the Small Business Regulatory Review Board for consideration under HRS Chapter 201M.

Procedure:

1. Approval of the Governor is required prior to any rule change proceeding to a public hearing.

Prior to formal publication of notice of public hearing on the proposed adoption, amendment, or repeal of any rule, departments and agencies will:

- a. Obtain the Attorney General's approval "as to form" prior to submitting the rule to me for approval for public hearing; provided that as to rules proposed for adoption, amendment, or repeal that are submitted by the Board of Regents of the University of Hawaii, such rules shall be first reviewed and approved as to form by the University's Office of General Counsel prior to submission to the Attorney General. The Department of the Attorney General will complete its pre-hearing review on an expeditious basis;
- b. Provide the Governor's office with a copy of the proposed rule, including the information requested in "Policy" items 1 through 7 above; and
- c. At the time the rules are submitted to the Governor's Office, concurrently provide copies to the Director of Budget and Finance (B&F) and to the Director of Business, Economic Development and Tourism (DBEDT) for their prompt review. B&F and DBEDT comments will be forwarded directly to the Governor.

2. Notice of Public Hearings.

If any proposed rule affects small business, the notice of public hearing will summarize any business impact described in the "Small Business Impact Statement," and will state any new fee or compliance burdens that will be placed on small business.

3. Final Approval After Public Hearing.

Departments and agencies will obtain the Governor's final approval for the adoption, amendment, or repeal of any rule after the required public hearing has been held. In seeking final approval, the director of the department or agency concerned shall:

- a. Indicate whether any revision is being recommended to the proposed rule, amendment, or repeal based on facts and circumstances brought out in the public hearing;
- b. If a revision or change is recommended, provide a copy of the proposed rule with revisions and changes to the Attorney General for approval "as to form" prior to resubmitting the rule to the Governor for final approval; provided that as to rules proposed for adoption, amendment or repeal that are submitted by the Board of Regents of the University of Hawaii, such rules shall be first reviewed and approved as to form by the University's Office of General Counsel prior to submission to the Attorney General.

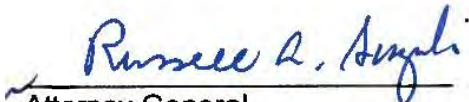
The Attorney General's office will approve the form within two weeks of receipt if the changes are not substantive. If the changes are determined to be substantial or material by the Attorney General, an additional public hearing will be held.

If a re-hearing of a proposed rule is sought, the procedures required for approval to proceed to public hearing will again be followed;

- c. Indicate whether the proposal affects small business, and, if so, whether a "Small Business Statement," which provides the information described in HRS Chapter 201M, has been submitted to the Small Business Regulatory Review Board; and
 - d. Submit three copies of the proposal in standard format and in accordance with Chapter 91, HRS, for the Governor's final approval. The original and a copy of the rules adopted by the department or agency will be signed by the director of the department, by the chairperson of a board or commission of a principal department, or by the chairperson of a board or commission if the rule has been adopted by a board or commission which is assigned to a department for administrative purposes. The third copy may use a facsimile of the required signatures.
4. Distribution of Approved Adopted Rules.
- a. A complete set consisting of three copies approved by the Governor will be filed at the Office of the Lieutenant Governor.
 - b. The Office of the Lieutenant Governor will provide one copy to the agency adopting, amending, or repealing the rule.
 - c. Each department or agency adopting, amending, or repealing the rule will provide one file-stamped and certified copy of the rule in the Ramseyer and standard formats to the Legislative Reference Bureau.

LINDA LINGLE

APPROVED AS TO FORM:



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